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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

LAURA LEE HAGENAUER;
Debtor.

Case No. 14-63530-fra-11

**PENSKE TRUCK LEASING CO., L.P.'S
OBJECTION TO DEBTOR'S SECOND
AMENDED DISCLOSURE STATEMENT
AND PARTIAL JOINDER IN KEYBANK'S
OBJECTION TO DEBTOR'S SECOND
AMENDED DISCLOSURE STATEMENT**

DATE OF HEARING: SEPTEMBER 14, 2015
TIME OF HEARING: 10:00 A.M.

Penske Truck Leasing Co., L.P. ("**Penske**"), by and through its undersigned attorneys of record, hereby joins, in part, KeyBank's Objection to Debtor's Second Amended Disclosure Statement [Docket No. 226] (the "**KeyBank Objection**") and further objects to the Debtor's Second Amended Disclosure Statement [Docket No. 221] ("**Disclosure Statement**") on the grounds that it is inaccurate, misleading, and does not provide adequate information as required

by 11 U.S.C. § 1125(a).

1. BACKGROUND

A. The Parties' Relationship

Penske leased certain vehicles and related equipment to Valley Rolling Corporation (“**Valley Rolling**”) pursuant to a Vehicle Lease Service Agreement (collectively, along with all assignments, supplements, and amendments, the “**Lease**”). Further, pursuant to the Lease, Penske agreed to provide certain maintenance, fueling, and other services to Valley Rolling in return for additional payments.

Valley Rolling defaulted under the Lease by failing to make payments when due. As of September 28, 2014 (the “**Petition Date**”) the amount of \$21,312.29 (the “**Unpaid Billings**”) was due and owing under the Lease. Additionally, Valley Rolling breached the Lease by, among other things, attempting to assign the Lease to its President, the Debtor, pursuant to a certain Assignment and Assumption Agreement dated September 26, 2014, between and amongst the Debtor and Valley Rolling (the “**Assumption Agreement**”). As a result of Valley Rolling’s breach and Penske’s termination of the Lease, in addition to the Unpaid Billings, Penske is entitled under the Lease to termination damages in the amount of \$39,637.00 (the “**Termination Damages**”).

The Assumption Agreement provides, among other things, that the Debtor assumed all outstanding debt of Valley Rolling, including all accounts payable. On January 15, 2015, Penske filed its unsecured claim number 15-1 in the amount of \$60,949.29 for the Unpaid Billings and Termination Damages (the “**Prepetition Claim**”).

Shortly after the Petition Date, Penske demanded the return of its vehicles. The Debtor, through her counsel, informed Penske that continued use of Penske’s vehicles was critical to the survival of her business. Penske permitted the Debtor to continue to use the vehicles for a

1 limited time, provided the Debtor timely paid all post-petition charges. The Debtor agreed and
2 continued to use the vehicles and accept Penske's services after the Petition Date, gradually
3 returning the vehicles over the ensuing months. However, the Debtor failed to pay all post-
4 petition charges, and on April 9, 2015, Penske filed its claim number 29-1 for post-petition
5 charges incurred from September 29, 2014 to November 4, 2014 in the amount of \$25,976.75
6 (the "**Administrative Claim**").

7 The Administrative Claim is entitled to administrative priority pursuant to 11 U.S.C.
8 § 503(b)(1)(A), because the charges the Debtor incurred were actual and necessary expenses of
9 preserving the estate. The Debtor has objected to the Administrative Claim. See Objection to
10 Claim and Order and Notice Thereon, May 20, 2015 [Docket No. 172] (the "**Claim Objection**").
11 The Claim Objection seeks, among other things, to reduce the amount of the Administrative
12 Claim and reclassify the remaining amount owed as a general unsecured claim. See Claim
13 Objection at 1.

14 Penske filed a response to the Claim Objection and maintains that the full Administrative
15 Claim is entitled to priority status. See Memorandum of Penske Truck Leasing Co., L.P. in
16 Response to the Debtor's Objection to Penske's Administrative Claim, July 2, 2015 [Docket No.
17 200]. A hearing on Penske's Administrative Claim and the Debtor's Claim Objection is
18 currently scheduled for November 4, 2015. Penske has not consented to any treatment of its
19 Administrative Claim other than as required pursuant to the Bankruptcy Code—payment in full
20 on the Effective Date of the Plan.

21 **B. The Disclosure Statement and Plan**

22 The Disclosure Statement and accompanying Second Amended Plan of Reorganization
23 (the "**Plan**") [Docket No. 220] do not clearly address Penske's Administrative Claim or Penske's
24 Prepetition Claim. With respect to the Administrative Claim, the Disclosure Statement states
25 that "[t]he Debtor has filed a claim dispute on this claim alleging the claim should be reduced to
26

1 \$4,607.37” See Disclosure Statement at 31-32. Further, the Disclosure Statement states
2 “Debtor will be required to pay on the Effective Date of the Plan, the full allowed claim of
3 Penske, unless Penske agrees in writing to be treated the same as the other administrative
4 claims.” Id. Thus, the Debtor’s apparent position is that the Administrative Claim should be
5 allowed in the amount of \$4,607.37.

6 With respect to the Penske’s Prepetition Claim, the Debtor lists the amount as
7 “\$60,929.49 (disputed).” The Debtor has not communicated to Penske, by the Disclosure
8 Statement or otherwise, the amount of the Prepetition Claim that is disputed or the nature of such
9 dispute. The Debtor has not filed with the Court any objection to the Prepetition Claim.

10 The Debtor’s proposed treatment of Penske’s Prepetition Claim is unclear. The Debtor
11 proposes to pay general unsecured claims such as the Prepetition Claim over 84 months. See
12 Disclosure Statement at 25. However, the Debtor lists the monthly payment amount on account
13 of the Prepetition Claim as \$346.66. Id. at 26. The aggregate total of 84 payments of \$346.66
14 each is \$29,119.44, not \$60,929.49. It would take the Debtor approximately 15 years to pay
15 Penske’s \$60,929.49 Prepetition Claim with monthly payments of \$346.66. Thus, it is entirely
16 unclear when and how Penske’s Prepetition Claim will be paid under the Plan.

17 18 **2. PARTIAL JOINDER AND ADDITIONAL OBJECTIONS**

19 The Court should again decline to approve the Debtor’s Disclosure Statement because it
20 does not contain sufficient information to permit creditors to make an informed decision about
21 the Plan. To the extent the Court would determine that the Disclosure Statement contains
22 adequate information, the Court should not permit waste of estate assets by allowing the Debtor
23 to incur the costs of soliciting votes for an unconfirmable Plan.

24 The KeyBank Objection urges the Court to deny approval of the Disclosure Statement for
25 several reasons, including that the Disclosure Statement contains false and misleading
26

1 information and that the Debtor's Plan is unconfirmable. Penske joins the KeyBank Objection to
2 approval of the Disclosure Statement for the reasons stated in the KeyBank Objection.

3 Penske believes the Disclosure Statement is false and misleading, and the Plan is
4 unconfirmable, based on the details set forth within the Plan and Disclosure Statement
5 themselves, together with the Debtor's other filings in the Case, all as described in the KeyBank
6 Objection.¹

7 Penske further objects to approval of the Disclosure Statement based on the manner in
8 which the Disclosure Statement addresses Penske's claims in the Case. Specifically, the
9 Disclosure Statement does not clearly indicate how Penske's claims will be treated under the
10 Plan.

11 The Disclosure Statement and Claim Objection are inconsistent with respect to what
12 portion, if any, of Penske's Administrative Claim the Debtor proposes should be given
13 administrative priority. Penske joins KeyBank in noting that the Debtor has not sufficiently
14 funded the proposed administrative claims reserve account and thus it appears the Debtor cannot
15 pay administrative claims such as Penske's on or before the effective date of a confirmed plan.

16 In addition, the Disclosure Statement does not contain sufficient information regarding
17 Penske's Prepetition Claim. First, the Disclosure Statement lists the Prepetition Claim as
18 "disputed", but does not say what portion is disputed or the basis of such dispute. Further, if the
19 Debtor were to pay Penske the monthly payment amount listed in the Plan, it would take
20 approximately 15 years to pay the full amount of the Prepetition Claim. Thus, Penske is unable
21 to make an informed decision about whether to vote for or against the Plan, and other creditors
22 do not have sufficient information to determine whether the Plan is feasible or in their respective
23 best interests.

24
25 ¹ Penske lacks knowledge of certain facts contained in the KeyBank Objection, and
26 therefore makes no representation to the Court with respect thereto.

1 **3. CONCLUSION**

2 The Court should not approve the Debtor's Disclosure Statement because it does not
3 contain sufficient information to enable creditors to make an informed decision whether to vote
4 in favor or against the Plan and because the Plan is patently unconfirmable. Penske joins the
5 KeyBank Objection to approval of the Disclosure Statement to the extent set forth above, and
6 further demands that the Debtor properly address in the Disclosure Statement the amounts and
7 payment of Penske's Prepetition Claim and Administrative Claim.
8

9 Dated: September 1, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2015, I filed the foregoing electronically through CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Registered Participants in the manner indicated:

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